

## **RURAL LEGACY PROGRAM**

### **OPTIONAL CONSERVATION EASEMENT PROVISIONS**

#### **INTRODUCTION:**

The Rural Legacy Program is designed to preserve large blocks of contiguous open space that is among the State's most valuable because of its agricultural, natural and cultural resources. In order to protect each of the unique values of these Rural Legacy Areas, primarily through the purchase of easements from willing landowners, the staff of the Departments of Natural Resources (DNR), Department of Agriculture (MDA), Maryland Agricultural Land Preservation Foundation (MALPF) and the Maryland Environmental Trust (MET) have assembled a sample conservation easement, and a "menu" of optional easement restrictions that might be negotiated with landowners, and, on a voluntary basis, added to this sample easement form. The following "off-the-shelf" easement provisions have been extracted from actual easements held by the MET, or developed for consideration by property owners under the interagency easement acquisition program for the protection of Civil War Sites and Greenways, by the DNR, the Department of Transportation and MET. These special optional easement terms would only be suggested where the resources on the actual property warrant their consideration. It would be highly unlikely for all of these optional easement terms to apply to any one property. Therefore, they are only listed below as *examples* of the types of terms needed for protection of special natural and historical resources, in addition to those terms found in standard MET and MALPF easements.

### **OPTIONAL EASEMENT PROVISIONS**

#### **PUBLIC ACCESS: (Under Article II)**

Note: The right of public access may not be required under a conservation easement acquired by the Rural Legacy Program. However, if a property owner volunteers to include public access provisions in an easement deed, a Sponsor may acquire this interest in the property with Rural Legacy Funds or matching funds obtained by the Sponsor.

#### **Option #1.**

*The Property shall be made available to the use and enjoyment of the general public, under the terms and conditions set forth below:*

(1) [Here the drafter needs to specify what portions of the Property are not to be made available to the use and enjoyment of the public.] *The general public shall not have any rights of use and enjoyment of the buildings, facilities, means of access or other structures described in paragraphs II(H) and II(I) and any land within one hundred feet of any of said buildings, facilities or other structures, except for the means of access to the Property, \_\_\_\_\_ and \_\_\_\_\_.*

(2) [Here the drafter needs to decide when there will be rights of use.] *The general public shall only have its rights of use and enjoyment from sunrise to sunset.*

(3) *The general public shall only have the rights of use and enjoyment for [here the drafter specifies uses, such as: water oriented recreation or education], Examples: The Property shall be made available for the use and enjoyment of the general public. Property uses shall be confined to water oriented recreation or education, history, wildlife and nature concerns, or scenic activities. Permitted uses may include swimming beaches, picnic and park areas, pavilions, boat ramps and facilities, piers and mooring facilities, bath houses, interpretive settings, exhibits, overlooks or other similar activities pertaining to public water oriented recreation or education, history, wildlife and nature or the enhancement of scenic open space. Public Access is limited to foot traffic or vehicular access is limited by e.g. bicycles or vehicular traffic is permitted in certain areas.*

*The general public's use shall be subject to all of the terms of this Conservation Easement and the general public shall have no rights of use greater than Grantor.*

(4) *Subject to the consent of Grantee, Grantor may establish other reasonable rules governing the rights of use and enjoyment by the general public.*

(5) [Here the drafter needs to decide whether signage should be required. Also, remember to amend II(B) to reflect the opportunity for Grantor to put up a sign concerning the public's right of use and enjoyment.] *The grantor shall post and maintain a sign [specify where, such as "at the entrance to the Property at the northeast corner of the Property" or "along \_\_\_\_ River"] so that it is clearly visible to persons outside of the Property.*

## **Option #2.**

[Specify specific portions of the Property, such as certain trails or beaches, as designated in paragraph \_\_ of the Easement and/or Exhibit \_\_] *shall be made available to the use and enjoyment of the general public, under the terms and conditions set forth below:*

(1) *The general public shall have no rights of use and enjoyment of the remainder of the Property, except for the means of access to the [certain trails or beaches], designated on Exhibit \_\_.*

(2) - (5) are the same as the first option.

## **CONSTRUCTION**

### **Option #1**

Use for size limitations of accessory structures:

"...provided that it (they) may not exceed a height of \_\_\_\_\_ (\_\_\_\_\_) feet (from ground to the highest point of the roof) and a footprint of \_\_\_\_\_ (\_\_\_\_\_) square feet, including, but not limited to, garages and other parts with an impervious foundation. The term "accessory residences" includes, but is not limited to, guest houses, tenant houses, farm manager houses, mobile homes, seasonal cabins and all other structures used for residential purposes that are not primary residences."

## Option #2

Use for non-residential structures on properties designed to protect visual and scenic characteristics :

“...so long as such structures do not interfere with the Agricultural, forestry, natural and cultural character of the Property and the viewshed of \_\_\_\_\_ as determined by Grantees.”

## FOOT TRAIL CONSTRUCTION

*To construct and maintain foot trails for the purpose of nature study in the sensitive wooded areas in compliance with a general trail location and design plan shall be developed by Grantor and approved by Grantees. Vehicular use and paving of trails is prohibited.*

## **BUFFER STRIPS (NOT APPROVED FOR CONSERVATION RESERVE ENHANCEMENT PROGRAM (CREP))**

### Option #1

*Grantors shall maintain a vegetative buffer strip (the “buffer strip”) to protect the ecological integrity of all tidal waters, tributary streams, and tidal wetlands, including \_\_\_\_\_ Creek (the “Creek”). Said buffer strip shall be a minimum width of one hundred (100) feet from the mean high water line or, if non-tidal, one hundred (100) feet from the bank of the non-tidal stream. [Note: “Tributary streams” should be defined in the specific conservation easement, because it is otherwise a potentially ambiguous term. At a minimum, the buffer provisions should extend to all “blue line streams,” which are streams shown on USGS quad maps and generally include most perennial streams. A tributary stream could be a perennial stream (flows all year) or an intermittent stream (flows only part of the year after a hard rain). The buffer provisions could also be applied to agricultural ditches, some of which are natural streams that have been made into ditches, while others are man-made ditches that function as intermittent streams.]*

*The following activities are prohibited in the buffer strip:*

- (a) cutting and removal of timber, except for non-native, dead, diseased or infested trees;*
- (b) planting or introducing any vegetation not indigenous to the watershed of the Creek;*
- (c) storage of manure, compost, pesticides, herbicides, or fertilizers;*
- (d) vehicular access to the general public; and*
- (e) placement or construction of any structures.*

*However, the following activities are not prohibited by this paragraph:*

- (a) non-vehicular access to the Creek for fishing, hunting, trapping and swimming by Grantors, their families, invitees and licensees;*
- (b) with the approval of Grantees, management practices to protect rare, threatened and endangered species; and*

*(c) with the approval of Grantees, use of pesticides, fertilizers and herbicides necessary to maintain natural ecological systems and processes.*

## **Option #2**

*Grantors shall maintain a low grass (pasture) buffer strip along the \_\_\_\_\_ stream during the time the Property is used for Agricultural purposes. If the Property is not used for Agricultural purposes, a grown-up vegetative buffer shall be established and, once established, the fully vegetated buffer shall be retained. The minimum width of the buffer strip shall be fifty (50) feet (or larger as required by applicable law) along the \_\_\_\_\_ stream, except as may be reasonably necessary for (1) erosion control; (2) access to recreational water uses and associated structures; (3) access for hunting, fishing, trapping or to the water; or (4) cutting and removal of dead, diseased, infested or non-native species of trees.*

## **Option #3 (this language is best used when the Sponsor give points for forested buffers in their EVS)**

### **Stream Buffer Strip**

1. In the area within one hundred (100) feet of the edge of \_\_\_\_\_ Creek the Grantors shall establish, if necessary, and maintain a forested buffer strip (the "Forested Buffer"). In the Forested Buffer, there shall be no burning, mowing, cutting, removal, grazing, livestock access, plowing, tilling or destruction of trees, shrubs grasses or other vegetation (collectively, "Vegetation") except for (1) Vegetation that is nonnative, invasive, infested or diseased; and in compliance with Article II.I. with respect to the *Soil Erosion and Sediment Control Guidelines for Forest Harvest Operation in Maryland* (the "Guidelines") prepared by the Maryland Department of Environment or comparable provision of any guidelines or regulations which may replace the Guidelines in the future or as they may be amended from time to time. The minimum width of the buffer strip shall be one hundred (100) feet (or larger as required by applicable law) at all times along the edge of \_\_\_\_\_ Creek, except as may be reasonably necessary for (1) erosion control; (2) recreational water uses and associated structures; (3) access for hunting, fishing, or trapping; or (4) (subject to Article II. B.) access to the water or the Property on the other side of the Creek.

2. Notwithstanding subparagraph 1 above, the Grantors have selected one (1) contiguous portion, \_\_\_\_\_ ( ) feet in length measured along the [northern/southern/eastern/etc] edge of \_\_\_\_\_ Creek, as the Grass Buffer (the "Grass Buffer") (shown generally on the aerial photograph, Exhibit \_\_\_\_ ) that will be subject to the following restrictions in lieu of the restrictions of the Forested Buffer (Article II.H.1. above):

The Grantors shall establish, if necessary, and maintain a low grass (pasture) buffer strip along the \_\_\_\_\_ Creek during the time the Property is used for Agricultural purposes. If the Property is not used for Agricultural purposes, a forested buffer shall be established and, once established, shall be retained. The minimum width of the buffer strip shall be twenty-five (25) feet (or larger as required by applicable law) along the \_\_\_\_\_ Creek, except as may be reasonably necessary for (1) erosion

control; (2) access to recreational water uses and associated structures; (3) access for hunting, fishing, trapping or to the water; or (4) cutting and removal of dead, diseased, infested or non-native species of trees.

## **CONSERVATION RESERVE ENHANCED PROGRAM (CREP) AND OTHER FEDERAL USDA CONSERVATION PROGRAMS**

Note: Under a Memorandum of Agreement (MOA) between the U.S. Department of Agriculture, the Commodity Credit Corporation and The State of Maryland, date October 20, 1997, the State agreed to establish a voluntary program for the purchase of perpetual easements for Conservation Reserve Program (CRP) land, in order to help reduce the occurrence of runoff, sediment, and nutrients in the Chesapeake Bay and which will promote enhanced wildlife habitats. One mechanism for satisfying the perpetual easement requirement in the MOA is the incorporation of CREP easement provisions into Rural Legacy Program whole property easements. Following are standard CREP buffer provisions modified for inclusion into Rural Legacy Program easements. It is anticipated that for most easements with CREP buffers, there will be either a forested buffer or vegetative buffer. In this case, use one of the two provisions below labeled “2. Maintenance of Buffer Area.” If both buffers will exist on a Property, then consult with the Rural Legacy staff in drafting easement language. The location of the wetlands area must also be indicated in Exhibit A of the easement.

A. 1. Effective Date of Buffer provision [to be inserted if property is under CREP contract and easement buffer provision will not be effective immediately].

The provisions described in A 2. below of this conservation easement are effective upon the earlier to occur of either (i) termination of a preexisting contract between a federal agency and Grantors pursuant to CREP that affects uses of the Property (“CREP Contract”) or (ii) [insert the date that the CREP Contract expires, which cannot be more than 21 years from the date of this Conservation Easement].

### 2. Maintenance of Buffer Area

Grantors agree to maintain a forested buffer area (“Forested Buffer Area”) within the Easement Area. In the Forested Buffer Area, there shall be no burning, mowing, cutting, removal, grazing, livestock access, plowing, tilling or destruction of trees, shrubs, grasses or other vegetation (collectively, “Vegetation”) except for: (1) nonnative, invasive or noxious Vegetation; (2) dead, insect infested or diseased Vegetation; (3) trees damming or backing up the normal flow of the \_\_\_\_\_  
[Type in name of River, Creek, Stream, Run or other waterway] (“Water Body”); (4) Vegetation, in full compliance with a management plan prepared by the Maryland Department of Natural Resources to protect rare and endangered species; (5) Vegetation for water-access or water-use related structures with the permission of Grantees; and (6) Vegetation for one crossing per Water Body for vehicular or livestock traffic to access the remainder of the Property as provided for in a Soil Conservation and Water Quality Plan.

However, Grantors may harvest trees more than fifty (50) feet from the edge of the Water Body provided, that all of the following conditions are met: (i) prior to, during and following any forest management or harvesting operation, Grantors shall comply with a current Forest

Stewardship Plan that is no more than ten (10) years old, at the time of harvest, and that has been prepared by a Maryland licensed forester for the Forested Buffer Area; (ii) harvesting and management activities shall be consistent with the *Soil Erosion and Sediment Control Guidelines for Forest Harvest Management Operations in Maryland*, prepared by the Maryland Department of Environment (the “Guidelines”) or comparable provisions of any guidelines or regulations which may replace the Guidelines in the future or as they may be amended from time to time; and (iii) harvesting of timber in the portion of the buffer from fifty (50) to one hundred (100) feet from the edge of the Water Body is limited to selection harvest except for loblolly pine and tulip poplar which may be clearcut. For the purpose of this paragraph, unless a different standard is approved by Grantees, selection harvest means “the removal of the mature timber, usually the oldest or largest trees, either as single scattered individuals or in small groups of relatively short intervals, repeated indefinitely, by means of which the continuous establishment of reproduction is encouraged and an uneven-aged stand is maintained.”

OR

## 2. Maintenance of Buffer Area

Grantors agree to maintain a vegetative buffer area (“Vegetative Buffer Area”) consistent with an Operation and Maintenance Plan prepared by the local Soil Conservation District. The Vegetative Buffer Area shall consist of perennial or permanent grasses, legumes, forbs and shrubs with a life span of ten (10) years or more (“Grasses”). In the Vegetative Buffer Area there shall be no burning, cutting, haying, mowing, seed harvesting, grazing, livestock access, plowing or tilling of Grasses except for: (1) nonnative or invasive Grasses or noxious weeds; (2) dead (not just dormant), insect infested or diseased Grasses; (3) Grasses in full compliance with a management plan prepared by the Maryland Department of Natural Resources to protect rare, threatened and endangered species; (4) burning with the approval of Grantees in consultation with the Maryland Department of Natural Resources; (5) Grasses for water-access or water-use related structures with the permission of Grantees; (6) Grasses for one crossing over the \_\_\_\_\_ [Type in name of River, Creek, Stream, Run or other waterway] (“Water Body”) for vehicular or livestock traffic to access the remainder of the Property, as provided for in a Soil Conservation and Water Quality Plan; (7) twice yearly burning, mowing or haying so long as such mowing or haying (i) does not take place between April 15 and August 15 or as determined by the Maryland Department of Natural Resources; (ii) is in compliance with an Operation and Maintenance Plan prepared by the local Soil Conservation District Office; (iii) leaves a height of at least six (6) inches of Grasses; and (8) grazing with the approval of the Grantees in consultation with the Maryland Department of Agriculture upon a Declaration of Drought Disaster by appropriate state or federal authorities, so long as such grazing is in compliance with a Operation and Maintenance Plan prepared by the local Soil Conservation District Office.

If the vegetative buffer succeeds to a forested buffer, then Grantors may: (a) harvest trees; provided, however, that the following conditions are met: (i) harvesting and management activities shall be consistent with the *Soil Erosion and Sediment Control Guidelines for Forest Harvest Management Operations in Maryland*, prepared by the Maryland Department of Environment [**only use “Guidelines” if previously defined**] or comparable provisions of any guidelines or regulations which may replace the *Guidelines* in the future or as they may be amended from time to time; and (ii) Grantors shall have and comply with a current Forest

Stewardship Plan which has been prepared by a licensed forester for the Easement Area prior to conducting any forest management or harvesting operations; and (b) after harvesting trees in compliance with the preceding paragraph (a), Grantors may also clear stumps and return the land to a vegetative buffer; provided, however, that Grantors comply with the 1994 Maryland Standards and Specifications for Soil Erosion and Sediment Control (currently incorporated by reference at COMAR 26.17.01.11) or comparable provisions of any standards, specifications or regulations which may replace the Standards and Specifications in the future or as they may be amended from time to time.

[Note: for a Forested Buffer and Vegetative Buffer, add this paragraph]

If the boundaries of the Buffer Area are based on the edge of the Water Body and the Water Body moves, then Grantors shall allow the portions of the Property not formerly in the buffer area to succeed to the required forested or vegetative buffer. All other applicable Terms shall apply.

[Add this to paragraph II. G. for wetlands protection under CREP]

3. Wetlands Area For those parts of the Easement Area designated on Exhibit A as “Wetlands Area”, the following Terms apply:

In the Wetlands Area, there shall be no burning, cutting, removal, grazing, haying, mowing, plowing, tilling or destruction of trees, shrubs, grasses or other vegetation (collectively, “Vegetation”) except for: (1) nonnative, invasive or noxious Vegetation; (2) dead, insect infested or diseased Vegetation; and (3) Vegetation in full compliance with a management plan prepared by the Maryland Department of Natural Resources to protect rare, threatened and endangered species. In addition, in the Wetlands Area, there shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities, except in connection with a conservation practice approved by a local Soil Conservation District or the Maryland Department of Natural Resources.

Note: In addition to the CREP, USDA and the Maryland Department of Agriculture provide several other programs of technical and financial assistance to landowners to encourage natural resource preservation, enhancement and restoration. The Rural Legacy Program easement should accommodate and permit landowner participation in such programs. Additional sample easement language will be supplied to Sponsors from time to time to incorporate the following programs, among others, into the Sample easement.

The *Wetlands Reserve Program* (WRP) allows owners to sell perpetual and 30 year term easements on farmed or converted wetlands or wetland pastures, former or degraded wetlands that were used for food and fibre production, riparian areas linking protected wetlands, and upland or natural wetland areas adjacent to restored wetlands that contribute significantly to wetland functions and values, including buffer areas. Rural Legacy funds may be used to extend the easement restrictions on Wetland Reserve Areas from 30 years to perpetual. The WRP also has a cost-sharing and technical assistance component, under which USDA may provide funds to owners of WRP easement property to restore wetlands on their property. Easements funded by the Rural Legacy program on such property should anticipate and allow for such restoration activities.

The *Wildlife Habitat Incentives Program* (WHIP) provides cost sharing payments to landowners for various types of wildlife enhancement efforts for habitat of upland and wetland wildlife, threatened and endangered species, fish, and other types of wildlife approved by the Secretary of Agriculture. Rural Legacy easements may extend the protections agreed to by property owners under this program into perpetuity, or accommodate habitat incentives as part of other easement restrictions on the properties.

The *Environmental Quality Incentives Program* (EQIP) provides cost-share payments, incentive payments, technical assistance and education to farmers for structural or land management practices designed to reduce threats to soil, water, grazing lands, wetlands, and wildlife habitat. Funding is from the Commodity Credit Corporation and jointly administered by the Natural Resource Conservation Service (NRCS) and the Farm Service Agency (FSA) in cooperation with the Soil Conservation Districts. Land conservation activities funded under this program, such as terraces, grassed waterways, contour grass strips, integrated pest management, grazing management, and structural activities that establish permanent habitat, can be accommodated within the Sample easement provisions, and should be anticipated when drafting Rural Legacy easements.

## **FOREST MANAGEMENT AND PRESERVATION**

[To be included in all Rural Legacy Program easements, where a primary purpose of the Rural Legacy Plan is to protect forestry resources, and an easement property has five (5) acres or more in woodland, except where certain mature forests or State Champion trees are intended to be preserved for values other than their resource-based economic values, where other special protection provisions would apply].

### **Provisions with valuation impact:**

#### **Option #1 (with no cutting language and specific exceptions)**

In the area designated on Exhibit \_\_\_\_ (the “Forest Area”), there shall be no burning, mowing, cutting, removal, grazing, livestock access, plowing, tilling or destruction of trees, shrubs grasses or other vegetation (collectively, “Vegetation”) except for (1) Vegetation that is [*optional*: dead, dying] nonnative, invasive, infested or diseased [*optional*: or that is to be used as firewood on the Property]; and (2) Vegetation, in full compliance with a management plan prepared by the Maryland Department of Natural Resources to protect the long term ecological health of the Forest Area or to protect species listed by Maryland or the federal government as endangered or threatened.

*Note to drafters:* It is recommended that structures or means of access should be avoided in the Forest Area. Nonetheless, if there are structures or means of access that are currently in the Forest Area or that may be constructed in the Forest Area, then the drafter should add another exception for “Vegetation within \_\_\_\_ feet of the structure or means of access.” If structures or means of access are not to be allowed in the Forest Area or are to be limited in their number or size, then the Easement will need to provide for that. Probably the best place would be in the paragraph limiting structures and means of access.



## Option #2 (with reference to forest stewardship plan)

In the area designated on Exhibit \_\_\_\_ (the “Forest Area”), Grantor shall be in compliance with a Forest Stewardship Plan that is reasonably current, but in no event more than fifteen (15) years old (the “Plan”), prepared by a licensed, registered forester and approved by the Maryland Department of Natural Resources, whose primary objective is [here insert an objective from the list below], and whose secondary objective is [here insert an objective from the list below, if there is one]. At a minimum, the Plan shall include:

- (1) an inventory of any physical and natural features of the land (including wetlands, streams, water bodies, roads, trails, public use areas, special plant and wildlife habitats, rare or unique species and communities, and other environmentally sensitive features) including any features identified in this Conservation Easement;
  - (2) a vegetation map, a soils map and a topographic map;
  - (3) an access plan for the property, including all areas to be commercially managed;
  - (4) erosion control measures, specifically addressing water bodies and wetland areas; and
  - (5) management strategies for sensitive habitats such as riparian areas (including the need to leave cover over streams and water bodies), endangered or threatened species habitat, steep slopes, and the features identified in the inventory described in (1) above.
- [Optional: (6) strategies to minimize the effects of structures in the Forest Area.]

In the Forest Area, there shall be no burning, mowing, cutting, removal, grazing, livestock access, plowing, tilling or destruction of trees, shrubs grasses or other vegetation (collectively, “Vegetation”) unless: (i) Grantor and said activity are in full compliance with the Plan; (ii) said activity is in compliance with the Soil Erosion and Sediment Control Guidelines for Forest Harvest Operations in Maryland, prepared by the Maryland Department of Natural Resources, as they may be amended from time to time, or comparable provisions of any guidelines, regulations or other requirements which may replace the Guidelines in the future.

[For the drafter: Here are the choice of objectives to be inserted above:

1. Timber production
2. Management of habitat for fish and wildlife game species
3. Trail and passive recreation management
4. Natural heritage protection (Species listed by the Federal government or Maryland as endangered, threatened or rare species)
5. Soil conservation and water protection
6. [Establishment and ]Maintenance of a \_\_\_\_\_ forest [see a forester to describe the forest type to be maintained]
7. Establishment and maintenance of an old growth forest ecosystem]

*Note to drafters:* It is recommended that structures or means of access should be avoided in the Forest Area. Nonetheless, if there are structures or means of access that are currently in the Forest Area or that may be constructed in the Forest Area, then the drafter should add the sixth item in italics to the list above. If structures or means of access are not to be allowed in the Forest Area or are to be limited in their number or size, then the Easement will need to provide for that. Probably the best place would be in the paragraph limiting structures and means of access.

### **Option #3 (for Forest Interior Dwelling Species)**

In the area designated on Exhibit \_\_\_\_ (the “Forest Area”), Grantor shall be in compliance with (i) the FIDS/Forestry Task Force Chesapeake Bay Critical Area Timber Harvest Plan Guidelines (the “FIDS Guidelines”) and (ii) a Forest Stewardship Plan that is reasonably current, but in no event more than fifteen (15) years old (the “Plan”), prepared by a licensed, registered forester and approved by the Maryland Department of Natural Resources, whose objective is establishment and maintenance of a forest ecosystem for species of birds (FIDS) that require relatively large blocks of undisturbed forest land to successfully nest. At a minimum, the Plan shall include:

- (1) an inventory of any physical and natural features of the land (including wetlands, streams, water bodies, roads, trails, public use areas, special plant and wildlife habitats, rare or unique species and communities, and other environmentally sensitive features) including any features identified in this Conservation Easement;
- (2) a vegetation map, a soils map and a topographic map;
- (3) an access plan for the property, including all areas to be commercially managed;
- (4) erosion control measures, specifically addressing water bodies and wetland areas; and
- (5) management strategies for sensitive habitats such as riparian areas (including the need to leave cover over streams and water bodies), endangered or threatened species habitat, steep slopes, and the features identified in the inventory described in (1) above;

[Optional: (6) strategies to minimize the effects of structures in the Forest Area.]

In the Forest Area, there shall be no burning, mowing, cutting, removal, grazing, livestock access, plowing, tilling or destruction (collectively, “Destruction”) of trees, shrubs, grasses or other vegetation (collectively, “Vegetation”) unless: (i) Grantor and said activity are in compliance with the Plan and the FIDS Guidelines and (ii) said activity is in compliance with the Soil Erosion and Sediment Control Guidelines for Forest Harvest Operations in Maryland (the “Guidelines”) prepared by the Maryland Department of Natural Resources, as they may be amended from time to time, or comparable provisions of any guidelines, regulations or other requirements which may replace the Guidelines in the future. Notwithstanding the Terms of this Article \_\_\_\_\_, Destruction of Vegetation is prohibited during the April to July breeding season except by approval of Grantees.

Note to drafters: It is recommended that structures or means of access should be avoided in the Forest Area. Nonetheless, if there are structures or means of access that are currently in the Forest Area or that may be constructed in the Forest Area, then the drafter should add the sixth item in *italics* to the list above. If structures or means of access are not to be allowed in the Forest Area or are to be limited in their number or size, then the Easement will need to provide for that. Probably the best place would be in the paragraph limiting structures and means of access.

**Provisions with no valuation impact (The following options do not require surveys. Use of one of the three options above requires a survey.):**

**Option #1**

Grantor shall be in compliance with a Forest Stewardship Plan in the Woodland Areas (as hereinafter defined) that is reasonably current, but in no event more than fifteen (15) years old (the “Plan”), prepared by a licensed, registered forester and approved by the Maryland Department of Natural Resources, whose primary objective is [here insert an objective from the list below], and whose secondary objective is [here insert an objective from the list below, if there is one]. At a minimum, the Plan shall include:

- (1) an inventory of any physical and natural features of the land (including wetlands, streams, water bodies, roads, trails, public use areas, special plant and wildlife habitats, rare or unique species and communities, and other environmentally sensitive features) including any features identified in this Conservation Easement;
  - (2) a vegetation map, a soils map and a topographic map;
  - (3) an access plan for the property, including all areas to be commercially managed;
  - (4) erosion control measures, specifically addressing water bodies and wetland areas; and
  - (5) management strategies for sensitive habitats such as riparian areas (including the need to leave cover over streams and water bodies), endangered or threatened species habitat, steep slopes, and the features identified in the inventory described in (1) above;
- [Optional: (6) strategies to minimize the effects of structures in the Forest Area.]

“Woodland Areas” is hereby defined as land Grantee determines, in its discretion, one (1) acre in size or greater that is at least ten percent (10%) stocked with trees of any size, or that had such tree cover prior to a recent harvest and is not currently developed for a non-forest use.

In the Woodland Areas, there shall be no burning, mowing, cutting, removal, grazing, livestock access, plowing, tilling or destruction of trees, shrubs grasses or other vegetation (collectively, “Vegetation”) unless: (i) Grantor and said activity are in full compliance with the Plan; (ii) said activity is in compliance with the Soil Erosion and Sediment Control Guidelines for Forest Harvest Operations in Maryland, prepared by the Maryland Department of Natural Resources, as they may be amended from time to time, or comparable provisions of any guidelines, regulations or other requirements which may replace the Guidelines in the future.

[For the drafter: Here are the choice of objectives to be inserted above:

1. Timber production
2. Management of habitat for fish and wildlife game species
3. Trail and passive recreation management
4. Natural heritage protection (Species listed by the Federal government or Maryland as endangered, threatened or rare species)
5. Soil conservation and water protection
6. [Establishment and ]Maintenance of a \_\_\_\_\_ forest [see a forester to describe the forest type to be maintained]
7. Establishment and maintenance of an old growth forest ecosystem]

## **Option #2**

In the Woodland Areas (as defined below), there shall be no burning, mowing, cutting, removal, grazing, livestock access, plowing, tilling or destruction of trees or other vegetation except for (1) trees that are non-native, invasive, diseased or insect infected; (2) trees, in full compliance with a management plan prepared by the Maryland Department of Natural Resources to protect the long term ecological health of the Woodland Areas or to protect species listed by Maryland or the federal government as endangered or threatened; (3) trees with a diameter base height (dbh) at four (4) feet of less than six (6) inches; and (4) trees within fifty (50) feet of an existing building or means of access. “Woodland Areas” is hereby defined as land Grantee determines, in its discretion, one (1) acre in size or greater that is at least ten percent (10%) stocked with trees of any size, or that had such tree cover prior to a recent harvest and is not currently developed for a non-forest use.

*Note to drafters:* It is recommended that structures or means of access should be avoided in the Woodland Areas. Nonetheless, if there are structures or means of access that are currently in the Woodland Areas or that may be constructed in the Woodland Areas, then the drafter should add another exception for “Trees within \_\_\_\_ feet of the structure or means of access.” If structures or means of access are not to be allowed in the Woodland Areas or are to be limited in their number or size, then the Easement will need to provide for that. Probably the best place would be in the paragraph limiting structures and means of access.

## **Option #3 (for Forest Interior Dwelling Species)**

In the Woodland Areas (as defined below), Grantor shall be in compliance with (i) the FIDS/Forestry Task Force Chesapeake Bay Critical Area Timber Harvest Plan Guidelines (the “FIDS Guidelines”) and (ii) a Forest Stewardship Plan that is reasonably current, but in no event more than fifteen (15) years old (the “Plan”), prepared by a licensed, registered forester and approved by the Maryland Department of Natural Resources, whose objective is establishment and maintenance of a forest ecosystem for species of birds (FIDS) that require relatively large blocks of undisturbed forest land to successfully nest. At a minimum, the Plan shall include:

- (1) an inventory of any physical and natural features of the land (including wetlands, streams, water bodies, roads, trails, public use areas, special plant and wildlife habitats, rare or unique species and communities, and other environmentally sensitive features) including any features identified in this Conservation Easement;
  - (2) a vegetation map, a soils map and a topographic map;
  - (3) an access plan for the property, including all areas to be commercially managed;
  - (4) erosion control measures, specifically addressing water bodies and wetland areas; and
  - (5) management strategies for sensitive habitats such as riparian areas (including the need to leave cover over streams and water bodies), endangered or threatened species habitat, steep slopes, and the features identified in the inventory described in (1) above;
- [Optional: (6) strategies to minimize the effects of structures in the Woodland Areas.]

In the Woodland Areas, there shall be no burning, mowing, cutting, removal, grazing, livestock access, plowing, tilling or destruction (collectively, “Destruction”) of trees, shrubs, grasses or other vegetation (collectively, “Vegetation”) unless: (i) Grantor and said activity are in compliance with the Plan and the FIDS Guidelines and (ii) said activity is in compliance with

the Soil Erosion and Sediment Control Guidelines for Forest Harvest Operations in Maryland (the “Guidelines”) prepared by the Maryland Department of Natural Resources, as they may be amended from time to time, or comparable provisions of any guidelines, regulations or other requirements which may replace the Guidelines in the future. Notwithstanding the Terms of this Article \_\_\_\_\_, Destruction of Vegetation is prohibited during the April to July breeding season except by approval of Grantees.

“Woodland Areas” is hereby defined as land Grantee determines, in its discretion, one (1) acre in size or greater that is at least ten percent (10%) stocked with trees of any size, or that head such tree cover prior to a recent harvest and is not currently developed for a non-forest use.

Note to drafters: It is recommended that structures or means of access should be avoided in the Woodland Areas. Nonetheless, if there are structures or means of access that are currently in the Woodland Areas or that may be constructed in the Woodland Areas then the drafter should add the sixth item in italics to the list above. If structures or means of access are not to be allowed in the Woodland Areas or are to be limited in their number or size, then the Easement will need to provide for that. Probably the best place would be in the paragraph limiting structures and means of access.

## **SOIL CONSERVATION USES**

Note: This paragraph may be used in place of the Soil Conservation Plan paragraph in the form document.

### **Total Resource Management Plan**

Within one (1) year of the Date of this Conservation Easement, Grantor shall have a Total Resource Management Plan (“TRMP”) prepared and approved by the local Soil and Conservation District. The objective of the TRMP shall be to attain sustainable use and sound management of soil, water, air, plant and animal resources on the Property. The TRMP shall emphasize the development of a Resource Management System (“RMS”). The RMS shall be a combination of conservation practices and resource management for the treatment of all identified resource concerns for soil, water, air, plants and animals that meets or exceeds the quality criteria in the Natural Resource Conservation Service Field Office Technical Guide (“Guide”) for resource sustainability or any comparable provisions of any guide or regulations which may replace the Guide in the future or as it may be amended from time to time. Revisions to the TRMP, including the schedule of implementation, may be made by Grantors and the local Soil Conservation District as land use practices or management changes, however, Grantors shall be in full compliance with the TRMP within six (6) years of the date of this Conservation Easement. Exceptions may be considered by Grantees on a case by case basis. Grantors shall provide a copy of the TRMP and any revisions to the TRMP to Grantees.

## **ECONOMIC USES**

### **Prohibited and Restricted Activities**

Industrial or commercial activities other than farming, silviculture and horticulture are prohibited on the Property, except for

- (1) such activities as can be conducted in existing structures without alteration of the external appearance thereof, including the operation of a bed and breakfast inn within the permitted residential structures (if so permitted by local zoning laws) . ( For the purposes of this Conservation Easement the term bed and breakfast inn shall mean the renting of rooms for the overnight stay of guests);
- (2) the sale to the public of agriculture or forestry products produced on the property; and
- (3) the establishment of a wholesale tree nursery on the Property.

## **ENDANGERED SPECIES**

### **Example #1**

No trees with an osprey nest or within one hundred (100) feet of any bald eagle nest that has not been abandoned for a period of at least two (2) years shall be cut. Appropriate experts such as the Natural Heritage Program at the Maryland Department of Natural Resources shall determine if an osprey or bald eagle nest has been abandoned for two (2) years.

### **Example #2**

Parcel No. 3-- The “\_\_\_\_\_Wharf” parcel includes rare intertidal aquatic plants (Maryland Burmarigold, *Bidens bidentoides*; and Mudwort, *Limosella subulata*) along the south facing shore. This parcel is registered with The Nature Conservancy as an Outstanding Maryland Natural Area. No activities or disturbances whatsoever shall take place along the south facing shore of Parcel No. 3 bayward of the mean high water line. This provision shall terminate upon a determination by the Nature Conservancy that both rare intertidal aquatic plants (Maryland Burmarigold, *Bidens bidentoides*; and Mudwort, *Limosella subulata*) no longer exist at the site or that they are no longer considered to be rare.

## **HUNTING & FISHING**

Note: If optional provisions are not added to the Sample easement, hunting and fishing on or from the property are not restricted by the easement in any way, and are permitted, except as restricted by the property owner, or the fish and game laws of the State of Maryland and local governments.

Hunting is permitted on the Property as long as all hunting activities are consistent with local, state, and federal regulations. This easement does not prohibit, regulate or restrict hunting. While other laws or regulations may restrict hunting, Grantee or its assignees shall not have a role in the enforcement of such laws or regulations.

## **CONTROL OF EXOTIC OR INVASIVE SPECIES**

There shall be no use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticide and herbicides, without a management plan for such activities and prior written approval of Grantee. Targets for control by pesticides and biocides shall be limited to those species which threaten a native plant or animal species or natural community type of conservation concern. Each proposal to control a biologic target by pesticides and biocides shall be addressed in a management plan. Each such management plan shall consist of several

elements, including but not limited to a description of the conservation goal to be achieved through the application of a pesticide or biocide treatment, the potential ecological consequences of the treatment and the impact on native plant or animal species or natural community if treatment is not conducted, the feasibility of alternative treatment methods, a review of the proposed control agent's effectiveness in controlling the target, and a proposed monitoring program to determine the efficacy of the application and treatment. Each such plan shall be approved by the Heritage and Biodiversity Conservation Programs, Maryland Forest, Wildlife and Heritage Service and Grantee.

## **RARE ECOSYSTEM**

Diking, draining, filling or removal of wetlands is prohibited. Manipulation or alteration of natural water courses, pond shore, marshes or other water bodies of the Property are prohibited, as are activities conducted on the Property which would be detrimental to water purity, or which could alter natural water level and/or flow, unless it is determined by Grantee, after consultation with the Heritage and Biodiversity Conservation Programs, Maryland Forest, Wildlife and Heritage Service, to be necessary to maintain the [rare ecosystem] or rare species populations occurring on the Property.

Removal, destruction, or cutting of trees, shrubs, or other vegetation on the Property is prohibited, except for (1) reasonable maintenance of existing accesses; (2) activities determined by Grantee, in consultation with the Heritage and Biodiversity Conservation Programs, Maryland Forest, Wildlife and Heritage Service, to be necessary to maintain the [rare ecosystem] or rare species populations occurring on the Property, or (3) removal of non-native invasive species.

Planting of trees or plants, storage or use of manure, fertilizers, lime or other chemical additives, or storage or use of herbicides, insecticides, or pesticides, introduction of non-native animals or plant materials, grazing of domestic animals, or disturbance in the natural habitat in any manner are prohibited, except activities determined by Grantee, in consultation with the Heritage and Biodiversity Conservation Programs, Maryland Forest, Wildlife and Heritage Service, to be necessary to maintain the [rare ecosystem], forested buffer, or rare species populations occurring on the Property.

Except as otherwise prohibited by this Deed of Conservation Easement, or as determined by Grantee, in consultation with the Heritage and Biodiversity Conservation Programs, Maryland Forest, Wildlife and Heritage Service, to be detrimental to the maintenance of the [rare ecosystem] or rare species habitat, Grantors may continue to hunt, fish or trap on the Property subject to any applicable laws.

Manmade disturbances that alter the vegetative structure, change the native species composition, or remove the accumulation of organic matter or downed woody material on the Property are prohibited, except those disturbances that may be recommended by Grantee, after consultation with the Heritage and Biodiversity Conservation Programs, Maryland Forest, Wildlife and Heritage Service, as necessary to perpetuate and protect the [rare ecosystem] or rare species populations on the Property.

The entire upland on the Property shall be maintained as a forested buffer around the wetland.

All rights reserved by or not prohibited to Grantors shall be exercised so as to prevent adverse impact to the [rare ecosystem], forested buffer, rare species populations, water quality, air quality, land/soil stability and productivity, and the natural topographic and open-space character of the Property.

## **SUBDIVISION (AGRICULTURAL)**

### **Option #1**

Note: Section II, C. of the Sample easement provides for limited agricultural subdivision of property as negotiated at the time the easement is drafted. This option would provide more flexibility for Grantors to allow unlimited agricultural subdivisions in the future, but only as approved by Grantee with advance notice. This more flexible easement option may also be more difficult to value, and may limit its price to the landowner.

Grantor may subdivide the property for agricultural purposes with the approval of Grantee. Grantor shall submit to Grantee for review and approval all such subdivisions prior to application for any local, state or federal permits or if no government permits are required, at least sixty (60) days in advance of any subdivision. No residential structures shall be permitted on any subdivision for agricultural use. All such agricultural subdivisions shall not be used to create any additional development density on any property and shall not be used to facilitate the construction of new residential structures.

### **Option #2**

Note: This may help when there are multiple existing principal residences [brackets provide Grantors a chance for a five acre subdivision, even if the minimum lot size allowed by zoning would be less than five acres]

[When an easement property contains more than one principal residence at the time of donation, insert a sentence allowing subdivision of the second or additional principal residence(s) to the minimum lot size allowed by zoning, as follows:] The principal residence[s] identified in paragraph \_\_\_\_\_ may [each] be subdivided to the [greater of five (5) acres or the] minimum lot size allowed by zoning and other applicable development regulations at the time of the subdivision. [This should be drafted to apply only to the second, third, etc. principal residence; as a standard approach, one residence should be maintained with the bulk of the property.]

### **Option #3**

Note: This may help when there are multiple reserved principal residences [brackets provide Grantors a chance for a five acre subdivision, even if the minimum lot size allowed by zoning would be less than five acres]

[If reserved principal residences are allowed under the easement so that there could be multiple principal residences over time, then the subdivision paragraph should also state the same approach for reserved residences, as follows:] The [or each] reserved residence allowed under paragraph \_\_\_\_ of this Conservation Easement may be subdivided to the [greater of five (5) acres



or the] minimum lot size allowed by zoning and other applicable development regulations at the time of the subdivision.

#### **Option #4**

Note: This may help when there are multiple parcels that do not need to remain in common ownership [language in brackets provides guidance for an exception for a subdividable parcel for a principal residence]

The Property currently consists of \_\_\_\_ parcels. The further division, partition, subdivision or boundary line adjustment (“Division”) of the Property is prohibited.[,except that for the one [reserved? existing?] principal residence, Grantors may subdivide one (1) parcel at the minimum lot size allowed by zoning and other applicable development regulations at the time of the subdivision.] However, the \_\_\_\_ parcels [and the one (1) reserved subdivision] may be separately owned and Grantee may approve the Division of the Property for reasons Grantee determines, in its sole discretion, are sufficiently extraordinary to justify an exception to the prohibition.

#### **Option #5**

Note: This may help when there are multiple parcels that are to remain in common ownership [language in brackets provides guidance for an exception for a subdividable parcel for a principal residence]

The division, partition or subdivision (“Division”) of the Property into more than the \_\_\_\_\_ (\_\_\_\_) parcels of land that constitute the Property, for any purpose, is prohibited. [, except that for the one [reserved? existing?] principal residence, Grantors may subdivide one (1) parcel at the minimum lot size allowed by zoning and other applicable development regulations at the time of the subdivision.] In addition, said parcels [other than the one (1) reserved subdivision] shall remain in common ownership. However, Grantee may approve the Division of the Property and separate ownership of the Property for reasons Grantee determines, in its sole discretion, are sufficiently extraordinary to justify an exception to the prohibition.